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State and Local Taxation

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Part Three. Subjects of Taxation

IX. Property and Interests Taxable, Generally

A. In General

§ 118. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2101](#), [2166](#) to [2168](#), [2170](#), [2212](#), [2214](#)

Taxation is the rule and not the exception,¹ and all property in a state is subject to taxation unless expressly exempted by statute² or unless the legislative power of the State to provide for the levy and collection of taxes is restricted by the state and federal constitutions.³ The receipt of direct or specific benefits is not a condition precedent to the payment of taxes which are not an assessment for benefits.⁴

Observation:

The purpose of a legislative decree that all property, real and personal, within the jurisdiction of the State is subject to taxation where owned by a resident or nonresident is to treat all property owners equally so that the tax burden will be shared proportionately and to gather all the tax money to which the various counties and municipalities are entitled.⁵

A state in which real property is located may tax it regardless of the citizenship of the owner.⁶ However, a State may not unjustifiably discriminate between residents and nonresidents in the exercise of its taxing power.⁷

Personalty is taxable at the domicile of the owner,⁸ regardless of its actual location in that state on the assessment date,⁹ unless the tangible personal property has acquired a tax situs of its own away from the domicile.¹⁰ However, if, on the date for assessment, tangible personal property has acquired a situs in a nondomiciliary state, it is subject to a nondiscriminatory property tax in such state;¹¹ taxable tangible personal property must have acquired a tax situs in the state, for situs is an absolute essential for tax exaction.¹² Personal property can have more than one situs for tax purposes.¹³ As a matter of due process, a domiciliary state cannot tax tangible personal property which is permanently located outside of the state.¹⁴

Observation:

The situs of personal property for purposes of taxation is determined by the legislature, and the legislature may provide different rules for different kinds of property and may change the rules from time to time.¹⁵

The general theory of taxation of intangibles is that they are taxed at the residence of the owner (*mobilia sequuntur personam*)¹⁶ regardless of the actual location.¹⁷ However, intangibles can be taxed by states other than the domicile of the owner where there have been sufficient contacts with the jurisdiction to make it fair and reasonable that the tax be paid,¹⁸ such as if it is controlled and placed with some degree of permanency in another state.¹⁹

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Footnotes

- 1 [In re Inter-Faith Villa, L.P., 39 Kan. App. 2d 810, 185 P.3d 295 \(2008\) \(abrogated on other grounds by, In re Mental Health Ass'n of Heartland, 289 Kan. 1209, 221 P.3d 580 \(2009\)\).](#)
- 2 [Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 339 Ill. Dec. 10, 925 N.E.2d 1131 \(2010\); In re Inter-Faith Villa, L.P., 39 Kan. App. 2d 810, 185 P.3d 295 \(2008\) \(abrogated on other grounds by, In re Mental Health Ass'n of Heartland, 289 Kan. 1209, 221 P.3d 580 \(2009\)\); Grand Forks Homes, Inc. v. Grand Forks Bd. of County Com'rs, 2011 ND 50, 795 N.W.2d 381 \(N.D. 2011\).](#)
As to exemptions, see §§ 207 et seq.
All non-exempt property is taxed ad valorem unless the legislature provides otherwise through the enactment of a substitute tax. [Liddell v. Heavner, 2008 OK 6, 180 P.3d 1191 \(Okla. 2008\).](#)
- 3 [Chicago Gravel Co. v. Rosewell, 103 Ill. 2d 433, 83 Ill. Dec. 164, 469 N.E.2d 1098 \(1984\).](#)
- 4 [Greater Chillicothe Sanitary Dist. of Peoria County v. Prather, 157 Ill. App. 3d 1086, 109 Ill. Dec. 760, 510 N.E.2d 628 \(3d Dist. 1987\); Griffin v. Anne Arundel County, 25 Md. App. 115, 333 A.2d 612 \(1975\).](#)
As to taxation of unbenefited real property, see § 129.
- 5 [Appeal of Plushbottom and Peabody, Ltd., 51 N.C. App. 285, 276 S.E.2d 505 \(1981\).](#)
- 6 [Hough v. Director, Division of Taxation, 2 N.J. Tax 67, 1980 WL 356759 \(1980\), decision aff'd, 4 N.J. Tax 528, 1981 WL 404491 \(Super. Ct. App. Div. 1981\).](#)
As to taxability of real property, see §§ 127 et seq.

- 7 Rubin v. Glaser, 83 N.J. 299, 416 A.2d 382 (1980).
- 8 Indiana Dept. of State Revenue v. Bethlehem Steel Corp., 639 N.E.2d 264 (Ind. 1994); Johnson v. Otey, 299 S.W.3d 308 (Mo. Ct. App. S.D. 2009).
As to taxability of personalty, generally, see § 123.
As to place of tax of personal property, generally, see §§ 547 et seq.
- 9 Mikos v. Ringling Bros.-Barnum & Bailey Combined Shows, Inc., 368 So. 2d 884, 2 A.L.R.4th 421 (Fla. Dist. Ct. App. 2d Dist. 1979); Vector Co., Inc. v. Benson, 491 S.W.2d 612 (Tenn. 1973).
- 10 Indiana Dept. of State Revenue v. Bethlehem Steel Corp., 639 N.E.2d 264 (Ind. 1994); Appraisal Review Bd. of Galveston County, Tex. v. Tex-Air Helicopters, Inc., 970 S.W.2d 530 (Tex. 1998).
- 11 Mikos v. Ringling Bros.-Barnum & Bailey Combined Shows, Inc., 368 So. 2d 884, 2 A.L.R.4th 421 (Fla. Dist. Ct. App. 2d Dist. 1979).
- 12 National Gypsum Co. v. Department of Treasury, 128 Mich. App. 750, 341 N.W.2d 203 (1983); Appeal of Bassett Furniture Industries, Inc., 79 N.C. App. 258, 339 S.E.2d 16 (1986).
- 13 Aramco Associated Co. v. Harris County Appraisal Dist., 33 S.W.3d 361 (Tex. App. Texarkana 2000); Mesa Leasing Ltd. v. City of Burlington, 169 Vt. 93, 730 A.2d 1102 (1999).
"Allocating" is determining the ratio of usage of personal property within each taxable situs when the property has more than one taxable situs. Starflight 50, L.L.C. v. Harris County Appraisal Dist., 287 S.W.3d 741 (Tex. App. Houston 1st Dist. 2009).
Instrumentalities of interstate commerce, such as airplanes, trains, and inland water vessels, may acquire a tax situs in multiple states. Flight Options, LLC v. State, Dept. of Revenue, 172 Wash. 2d 487, 259 P.3d 234 (2011).
- 14 Mikos v. Ringling Bros.-Barnum & Bailey Combined Shows, Inc., 368 So. 2d 884, 2 A.L.R.4th 421 (Fla. Dist. Ct. App. 2d Dist. 1979); Marion v. Floyd County Bd. of Equalization, 270 Ga. 475, 511 S.E.2d 512 (1999); State v. Richard L. Hodges, Inc., 420 A.2d 247 (Me. 1980).
- 15 In re Appeal of SAS Institute Inc. from a decision of Wake County Bd. of Com'rs for 2006, 200 N.C. App. 238, 684 S.E.2d 444 (2009).
- 16 Matter of McCormac, 64 Haw. 258, 640 P.2d 282 (1982); Goodyear Tire & Rubber Co. v. Tracy, 85 Ohio St. 3d 615, 1999-Ohio-325, 710 N.E.2d 686 (1999).
As to taxation of intangible personal property, see § 124.
- 17 Fleet Nat. Bank v. Clark, 714 A.2d 1172 (R.I. 1998).
- 18 Matter of Heftel Broadcasting Honolulu, Inc., 57 Haw. 175, 554 P.2d 242 (1976).
- 19 Matter of McCormac, 64 Haw. 258, 640 P.2d 282 (1982); Indiana Dept. of State Revenue v. Mercantile Mortg. Co., 412 N.E.2d 1252 (Ind. Ct. App. 1980).

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